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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, *et al.*

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, *et al.*,

Defendants.

Case No. 3:25-cv-03698-SI

**REPLY IN SUPPORT OF DEFENDANTS'
MOTION FOR A PROTECTIVE ORDER
OR IN THE ALTERNATIVE FOR
RECONSIDERATION AND REQUEST
FOR AN IMMEDIATE
ADMINISTRATIVE STAY**

1 Plaintiffs sought and received a sweeping temporary restraining order (TRO)¹ that enjoins
 2 the Office of Management and Budget (OMB), the Office of Personnel Management (OPM), the
 3 United States DOGE Service (USDS), twelve Cabinet-level Departments, and numerous other
 4 components from implementing or enforcing sections 3(c) and 3(e) of Executive Order 14210
 5 (Workforce Executive Order) and the February 26, 2025 OMB/OPM Memorandum (Workforce
 6 Memorandum). The Court found that statutory authority for the Workforce Executive Order was
 7 “plainly lacking.” As to the Memorandum, the Court held that it asserted authority “far outside the
 8 bounds of any authority that Congress vested in OPM or OMB.” The Court also held that OPM
 9 and OMB unlawfully engaged in rule-making without following notice-and-comment procedures
 10 when they issued the Workforce Memorandum and whenever OPM/OMB approve ARRPs. The
 11 Court stated all of this and more in a 42-page opinion, after holding a live hearing and reviewing
 12 extensive briefing (including principal briefs from both parties double the size permitted under the
 13 local rules, and amicus briefs on both sides). The Government respectfully disagrees with the
 14 Court’s conclusions, as well as its characterization of the Workforce Executive Order and
 15 Workforce Memorandum. But because the Court was able to enter equitable relief for Plaintiffs
 16 based on Plaintiffs’ facial challenges to the Workforce Executive Order and Workforce
 17 Memorandum, Plaintiffs cannot show that they need access to the Agency RIF and Reorganization
 18 Plans (ARRPs) at the preliminary injunction stage.

19 None of this is enough for Plaintiffs. According to them, the Government should also be
 20 required to produce all ARRPs, extensive long- and intermediate-term agency planning documents
 21 that memorialize agencies’ thinking at one stage of an interagency dialogue about policy choices
 22 to be made down the road, and which include highly sensitive information such as “strategies for
 23 agency negotiations with unions,” “present and future appropriations requests,” and
 24 “congressional engagement.” And they would have this Court direct the Government to turn over
 25 all of these sensitive agency planning documents immediately—a step which would of course be
 26

27 ¹ As noted in Defendants’ motion, *see* ECF No. 88 (Motion) at 1, Defendants contest that this order
 28 is properly characterized as a TRO, but for ease of reference, Defendants will refer to it as a TRO
 here.

1 irreversible—without a protective order and without an opportunity for the Government to orderly
2 seek appellate review. All of this even though Plaintiffs never filed a discovery motion, never
3 conferred with the Government on any such motion, did not follow any of the local rule
4 requirements for resolving discovery disputes, and included a single conclusory paragraph on the
5 subject in their TRO motion that contained no meaningful legal justification and as to which the
6 Government responded under a briefing schedule it opposed. This is extraordinary. The Court
7 should grant reconsideration or a protective order that relieves the government of the obligation to
8 produce the ARRP's and the other materials the Court has ordered produced.

9 As a threshold matter, the ARRP's are privileged. Plaintiffs insist that they are not
10 predecisional or deliberative because, among other flawed arguments, OPM/OMB purportedly
11 approve the ARRP's and the Workforce Memorandum sets forth the items ARRP's should include.
12 But any approval function OMB and OPM exercise does not change the fact that ARRP's are
13 agency planning documents, such documents are always subject to change, and agencies are not
14 *required* to follow every plan, strategy, and recommendation in an ARRP. This is clear not only
15 from the declaration Defendants submitted but from the Workforce Memorandum itself, which
16 plainly contemplates agency submissions of plans that include potential steps which will not be
17 effectuated until far into the future, if at all. And although the Workforce Memorandum may set
18 forth the *topics* ARRP's should address, the *substance* of the agency's recommendations, plans,
19 and strategies on those topics (set forth in the ARRP's) are plainly privileged.

20 Nor do Plaintiffs have any serious response to the Government's explanation of the
21 irreparable harm that would flow from irreversible disclosure of the ARRP's and associated plan
22 documents. Plaintiffs submit portions of one ARRP from one agency that is not a defendant in this
23 lawsuit and that is fundamentally unlike the agencies in this suit. They only attach the cover sheet
24 from that agency's Phase 2 ARRP, not the entire report. And in any event, the materials Plaintiffs
25 submit from that agency, far from supporting Plaintiffs, were clearly privileged before they were
26 disclosed and only underscore the predecisional and deliberative nature of ARRP's.

27 But to the extent the Court has any doubt about whether the ARRP's are actually privileged,
28 the appropriate solution is to require Plaintiffs to file the discovery motion they should have filed

1 in the first place but did not, and to allow for orderly briefing on that question. Plaintiffs’
 2 contention that the Government did not provide enough specificity about the basis for its privilege
 3 assertions is facially ridiculous since Plaintiffs never made a discovery request, never filed a
 4 discovery motion, did not follow the local rules for resolving disclosure disputes, and given that
 5 the Court issued the Disclosure Order late Friday night with a Tuesday deadline. It is entirely
 6 unwarranted that the Government is being forced to litigate its privilege assertions on an
 7 emergency basis like this to begin with. The Government’s submissions amply justify its privilege
 8 assertions in light of that context.

9 Putting all of this aside, there is still no basis for ordering immediate production of the
 10 ARRP’s and related material. Plaintiffs broadly challenge the legality of the Workforce Executive
 11 Order, OPM’s guidance, and supposed USDS directives. Their purported challenges to agency
 12 implementation are not garden variety APA challenges, and are derivative of their claims that the
 13 Order and Workforce Memorandum direct illegal action. But even if the content of the ARRP’s
 14 were relevant to this case, they are plainly not necessary for the upcoming *preliminary injunction*
 15 *proceedings*. Again, although this Court’s TRO Opinion reserved decision on some subsidiary
 16 topics, it also concluded that the Workforce Executive Order and Workforce Memorandum were
 17 unlawful and that the ARRP’s flowed from illegal directives (among many other rulings adverse to
 18 the Government). Respectfully, it would be extraordinary to require the Government to produce
 19 broad categories of documents that are privileged and highly sensitive, on an ultra-expedited
 20 timetable without allowance for appellate review when—at most—the justification is that these
 21 documents might conceivably be relevant only to a potential *alternative ground* for an injunction.

22 Finally, if the Court does order disclosure, it should grant a seven-day administrative stay
 23 of any disclosure order to allow for the Solicitor General to decide whether to seek emergency
 24 appellate relief.

25 ARGUMENT

26 I. The ARRP’s and Other Planning Documents are Privileged and their 27 Disclosure would Irreparably Harm the Government

28 As Defendants have explained, ARRP’s are predecisional and deliberative. Motion at 3-5.
 ARRP’s are constantly subject to change, nothing in an ARRP irrevocably commits an agency to

1 taking a specific step, and an ARRP may change drastically as the agency's thinking and priorities
 2 change. *Id.* at 4; Billy Decl. ¶¶ 4-5. Indeed, they are necessarily predecisional because they
 3 typically include plans for changes that would take place many years in the future, if at all. Billy
 4 Decl. ¶ 3. They contain many recommendations distinct from specific RIFs. *Id.*; TRO Opp. at 15-
 5 16. They are also deliberative. It would obviously "discourage candid discussion within the agency
 6 and thereby undermine the agency's ability to perform its functions," *Carter v. U.S. Department*
 7 *of Commerce*, 307 F.3d 1084, 1089 (9th Cir. 2002), if agencies' decisionmaking process on such
 8 sensitive topics as personnel reorganizations, strategies regarding present and future regulatory
 9 changes, and congressional engagement strategies (among other things) were exposed to the public
 10 before they are finalized.

11 Plaintiffs have no persuasive response. Their principal argument is that ARRPs cannot be
 12 predecisional if OMB and OPM have approved them. *See* ECF No. 96 (Opposition) at 7; *see also*
 13 *id.* at 1 (contending that the Government "carefully avoid[s] stating whether any approvals have
 14 already occurred or will imminently occur"). This is a non-sequitur. Plaintiffs never come to grips
 15 with the fact that ARRPs are merely *plans* related to *future* agency actions, not themselves agency
 16 actions. And even to the extent OPM and OMB approve such plans, that obviously does not mean
 17 that the ARRPs are set in stone such that agencies are *obligated* to follow all the plans,
 18 recommendations, and strategies set forth in the ARRP.

19 A simple example illustrates the point. If an agency created a plan concerning five
 20 regulations it was planning on issuing in the next year, that plan would obviously be predecisional
 21 and deliberative, even if the agency had submitted the plan to OMB for "approval" under an
 22 Executive Order and even if OMB had actually "approved" it. And no one would seriously contend
 23 that OMB's approval bound the agency to *actually issue* the regulations if circumstances changed
 24 or the agency simply changed its mind. So too here. Plaintiffs' contention that the mere fact of
 25 alleged OMB/OPM approval "is inconsistent with the notion that ARRPs are fluid, internal
 26 planning aids that the agencies consider on an ongoing basis," Opposition at 8, thus has no basis.
 27 And as discussed in the next section, Plaintiffs' reliance on portions of an ARRP released by one
 28

1 federal agency only *reinforces*—rather than refutes—the Government’s argument that these
2 materials are privileged.

3 Putting aside that nothing in the Workforce Memorandum remotely suggests that the
4 ARRPs are set in stone and that OMB has unequivocally explained that they are not, it is obvious
5 from the Workforce Memorandum itself that the ARRPs *must* be predecisional and deliberative.
6 To take three representative examples: The Workforce Memorandum states that Phase 2 ARRPs
7 should provide, among other things: (1) any proposed relocations from Washington, D.C. to less
8 expensive areas of the country; (2) plans to improve efficiency and reduce costs through improved
9 technology; and (3) “[a]ny changes to regulations and agency policies, including changes that must
10 be pursued through notice-and-comment rulemaking.” ECF No. 37-1 App. 2 at 5-6. That an agency
11 expresses a plan to relocate some staff (or not) does not bind it to that result, any more than it
12 might choose to pursue a different technological solution that is more cost-effective. Similarly, of
13 course an agency would not be obligated to go forward with regulatory changes (including notice-
14 and-comment rulemaking) if the agency later changed priorities or otherwise concluded that the
15 regulatory changes proposed in an ARRPs were unwise. Plaintiffs’ reference to the principle that
16 the mere possibility of future revision does not necessarily make an action non-final, *see*
17 Opposition at 8, is thus beside the point. By their very nature, ARRPs are dynamic and fluid
18 intermediate and long-term planning documents that include strategies, plans, and
19 recommendations that are inevitably subject to modification and adjustment as the agency’s
20 thinking and priorities change, or as circumstances otherwise warrant.

21 Plaintiffs also contend that the ARRPs are pre-decisional because “[t]he terms of the
22 ARRPs submitted by Federal Agency Defendants are established by the parameters of the EO and
23 the OMB/OPM Memo.” Opposition at 7-8. This also misses the point entirely. Although the
24 Workforce Memorandum may set forth the *topics* ARRPs should address, the agency’s actual
25 recommendations, plans, and strategies on those topics are obviously not dictated by the
26 Workforce Memorandum, and how the agency plans to address those topics is plainly
27 predecisional and deliberative.

1 Plaintiffs also assert that “ARRPs cannot be predecisional given that their implementation
 2 is already underway.” Opposition at 8. This argument also fails. The Government has never
 3 contended—and obviously does not contend—that *none* of the proposed recommendations,
 4 strategies, and techniques set forth in the ARRPs will be acted upon. Relatedly, there is no merit
 5 to Plaintiffs’ claim that Defendants are “weaponiz[ing] a privilege intended to promote good
 6 government to hide secret efforts directing a wide-scale dismantling of the government.” *Id.* at 2.
 7 If an agency actually decides to go forward with steps that might affect Plaintiffs—RIFs, transfers,
 8 reorganizations, re-assignments, regulatory changes, etc.—Plaintiffs and the public will learn
 9 about those decisions when they are made. Indeed, when final determinations have been made,
 10 agencies *are* publicly releasing their final plans (*see, e.g.*, [https://www.hhs.gov/press-room/hhs-](https://www.hhs.gov/press-room/hhs-restructuring-doge.html)
 11 [restructuring-doge.html](https://www.state.gov/building-an-america-first-state-department/); <https://www.state.gov/building-an-america-first-state-department/>), and
 12 they are following the required notice process for RIFs where RIFs are issued.

13 Plaintiffs’ real complaint is that they would like to know the Government’s
 14 recommendations, strategies, and thinking concerning matters as to which it has not made final
 15 decisions. But that is just another way of saying that Plaintiffs seek predecisional and deliberative
 16 information. They are not entitled to that information, particularly on the highly expedited
 17 timetable they seek to require the Government to produce it.

18 Finally, Plaintiffs’ brief argument that the ARRPs are not deliberative is similarly incorrect
 19 and adds nothing to the analysis. Plaintiffs simply repeat their assertion that, because agencies are
 20 required to submit the ARRPs in furtherance of the Workforce Executive Order and the Workforce
 21 Memorandum sets forth the items they should address, the agencies’ substantive plans,
 22 recommendations, and strategies are fixed and not part of a give and take process within the
 23 agencies. *See* Opposition at 9. As previously explained, that is wrong. The ARRPs are privileged.

24 **II. Disclosure of the ARRPs would Irreparably Harm the Government**

25 Plaintiffs cannot seriously dispute that public disclosure of all the ARRPs (as well as
 26 agency applications for waivers of statutorily-mandated RIF notice periods, and any responses by
 27 OMB or OPM to such waiver requests) would irreparably harm the government. Publication of
 28 confidential documents is irreversible and quintessential irreparable harm. Motion at 5-6

(collecting cases). And the ARRP's contain highly sensitive information of the highest order: This "information includes strategies for agency negotiations with unions; plans and strategies for personnel reorganization that may or may not materialize, but might seriously hurt agency recruitment and retention if released; plans and strategies regarding present and future regulatory changes; plans and strategies for present and future appropriations requests; plans and strategies for congressional engagement; and plans and strategies for agency IT management." Billy Decl. ¶ 4. This highly sensitive information "would seriously undermine agency operations if they were released." *Id.*

To the extent Plaintiffs respond to this line of argument at all, they rely on portions of an ARRP released by the National Endowment for the Humanities (NEH). *See* Opposition at 10 (contending that NEH ARRP supposedly shows "how benign much of the information apparently contained in the documents actually is"). This argument fails on every level. For one, NEH is not a defendant in this case. Moreover, NEH has a small number of employees, <https://bestplacetowork.org/rankings/detail/?c=AJ00> (suggesting that NEH has about 125 employees), a miniscule budget (approximately \$200 million in 2023), and implements a limited set of authorities largely concerning providing grants to cultural institutions, *see* ECF No. 96-1 at 17-18. There is no basis to conclude that the content of NEH's Plan—let alone the practical impacts to the government—would be the same as disclosure of the Plans of the actual defendants in this case. And as Plaintiffs note, NEH is subject to its own Executive Order. Opposition at 4 n.2. No less importantly, Plaintiffs' submission does not *actually include* the NEH Phase 2 ARRP; Plaintiffs only attach the cover sheet, not the entire Phase 2 report. ECF No. 96-1 at 23.

In any event, it is clear that the documents attached to the Soriano Declaration contain information that is predecisional and deliberative in nature. For example, in response to questions in the Phase 1 ARRP, NEH identified "a number of NEH offices that current leadership *believe* should be eliminated" and consolidated, and described what NEH was "considering," including offices "NEH is considering eliminating." ECF No. 96-1 Att. C at 3 (emphasis added). The agency explicitly identified ARRP Phase 1 as "a pre-decisional document." ECF No. 96-1 Ex. 1 at 6. Also, the agency marked its ARRP Phase 2 submission as "Predecisional – Deliberative." ECF No. 96-

1 1 Att. D at 2. And the cover sheet for the Phase 2 ARRP (the only part of the Phase 2 ARRP
 2 attached to the Declaration) contains plans for future staffing levels at the agency, so it is obviously
 3 predecisional and deliberative (and is marked as such). *Id.* The cover sheet also makes clear that it
 4 allows for information to be presented for FY25, 26 and 27; plans for those years would necessarily
 5 have to be contemplated plans, not final decisions.

6 Nor do Plaintiffs provide any persuasive response to the Government's other points on
 7 irreparable harm. As to the Government's point that the disclosure will undermine negotiations
 8 with unions, Plaintiffs have no response except to invoke a separate Executive Order excluding
 9 certain unions from collective bargaining. *See* Opposition at 13. And as Mr. Billy's declaration
 10 further explained, disclosure of the ARRPs would reveal "plans and strategies for personnel
 11 reorganization that may or may not materialize, but might seriously hurt agency recruitment and
 12 retention if released." Billy Decl. ¶ 4. General intentions to conduct RIFs, reorganizations, or other
 13 actions are, to a job seeker or employee, very different than plans to conduct specific
 14 reorganizations or RIFs.

15 At bottom, Plaintiffs provide no plausible refutation of the undoubted irreparable harm the
 16 Government would suffer from an irreversible order that it disclose dozens of high-level agency
 17 planning documents with reams of sensitive information. And it would be extraordinary to require
 18 the Government to produce all of these sensitive materials on a highly expedited basis, without
 19 proper motion practice.

20 **III. Requiring Disclosure in this Context Would Be Improper and Procedurally** 21 **Unfair to the Government**

22 For reasons set forth above, the Government has sufficiently established that ARRPs and
 23 associated documents are privileged from disclosure. That is clear both from the Declaration it
 24 submitted and the Workforce Memorandum itself, which clearly calls for information and
 25 recommendations that by their very nature will be dynamic and subject to change. But if the Court
 26 has doubts on that score, the Court should set the matter for an orderly briefing schedule, including
 27 requiring Plaintiffs to file an actual proper discovery motion, to follow the local rule requirements
 28 for resolving discovery and disclosure disputes, *see* Local Rule 37-1, and give the Government an

1 adequate amount of time to supply whatever information the Court believes is required to
2 adjudicate the privilege dispute (including individualized declarations from agencies if necessary).

3 Notably, Plaintiffs do not—and cannot—dispute the Government’s point that the Court
4 conducted no privilege analysis before requiring it to immediately disclose the ARRs, let alone
5 the sort of granular analysis the Ninth Circuit has held is required. Motion at 8; *Karnoski v. Trump*,
6 926 F.3d 1180, 1206 (9th Cir. 2019). But Plaintiffs contend that the Government was given a fair
7 opportunity to establish the privilege *in responding to their TRO motion*, such that it should be
8 forced to take the irreversible step of making these highly sensitive documents public now. They
9 remarkably assert that the Government “seeks a second bite at the apple,” Opposition at 14, and
10 has “Failed to Properly Invoke or Justify the Asserted Privilege with the Required Specificity,” *id.*
11 at 10. And they repeatedly criticize the Government for, *inter alia*, its “single, short declaration”
12 and its supposedly “cursory arguments.” *Id.* at 2, 7.

13 This entire line of argument is wrong. After Plaintiffs drafted a 115-page complaint, filed
14 a TRO motion, and prepared over a thousand pages of declarations and exhibits, the Government
15 filed a brief opposing Plaintiffs’ request that their 51-page brief be litigated on a TRO schedule,
16 noting that such a schedule would be “unwarranted and unfair to the United States.” ECF No. 40
17 at 6. The Court entered a schedule allowing Defendants 4 business days to respond.
18 Notwithstanding Plaintiffs’ time and effort, Plaintiffs made no attempt to file a proper discovery
19 motion. They did not file a discovery motion, nor even caption their TRO motion as seeking
20 expedited discovery. Contrary to Plaintiffs’ assertions, this does not “elevate[] form over
21 substance.” Opposition at 15. A motion for discovery seeks different relief, and is subject to
22 completely different legal standards, than the TRO relief Plaintiffs sought. And an order directing
23 the immediate disclosure of documents is not even plausibly characterized as a step to merely
24 maintain the status quo pending an adjudication on the merits. Freezing the status quo does not
25 equate to or require forcing the Government to make granular privilege objections on 4 business
26 days’ notice for 21 governmental components (including nearly every Cabinet-level Department),
27 all on pain of permanent forfeiture of its privileges.

1 Nor did Plaintiffs follow any of the local rule requirements for resolving discovery and
2 disclosure disputes (a proposition their opposition does not dispute). They did not attempt to serve
3 proposed discovery requests. They did not confer with the Government or indicate that their TRO
4 motion would also seek discovery. And their entire justification for this request was a single
5 conclusory statement at the bottom of page 50 of their 51-page brief, in which they made no
6 attempt to establish that the ARRP's were non-privileged and otherwise subject to disclosure.

7 Under the circumstances, the Government would have been justified—on the highly
8 expedited timetable for responding to Plaintiffs' 51-page TRO motion—in simply not responding
9 to this procedurally improper and wholly conclusory demand at all. But the Government did
10 respond. It pointed out that Plaintiffs had provided no legal basis for this request, TRO Opposition
11 at 48, and stated separately that ARRP's were deliberative, *id.* at 21. That was more than sufficient
12 under the circumstances. And respectfully, the Court erred by ordering immediate production of
13 these documents without engaging in any privilege analysis, and without ordering briefing on the
14 subject.

15 Plaintiffs' criticisms of the Government's post-TRO efforts to obtain relief from the
16 Disclosure Order are similarly preposterous. *See* Opposition at 15 ("But it is the Government that,
17 having now taken a *second* opportunity to do so, has failed to assert the privilege with sufficient
18 specificity to allow for a granular evaluation."). The Court required virtually immediate production
19 of these documents as part of a TRO Order issued just before 9:30 pm eastern time on Friday night;
20 because of the Tuesday deadline, the Government was required to seek near immediate relief from
21 this Court; and it is now being afforded one business day to reply to Plaintiffs' opposition. Again,
22 there is no reason for this highly expedited schedule, as Plaintiffs' desire to see the ARRP's plainly
23 does not present anything that could even plausibly be characterized as an emergency. But putting
24 that aside, the Government's submissions amply justify its privilege assertions in this context. It
25 is wholly unreasonable to expect the Government—in *opposing a TRO*—to compile the sort of
26 response it would have provided if it were actually in the discovery phase of a case, or the
27 specificity it would generally provide in a *Vaughn* index in a FOIA case.

Finally, Plaintiffs cannot seriously dispute that the scope of the disclosure the Court ordered exceeds even what Plaintiffs sought in their motion. *See* ECF No. 37-3 (requesting only “current versions” of the Plans). Plaintiffs acknowledge that they first asked for “waivers” of the 60-day RIF notice period at the end of the live hearing. Tr. at 43. Nor did Plaintiffs ever ask for “agency applications for waivers” at all. The language they quote from the hearing—“receiving and granting waivers”—is not a request for “applications,” and even if it was, it plainly would be unfair to the Government to order disclosure of assertedly privileged materials based on a cryptic and conclusory oral request at a hearing, without any briefing at all.

IV. The ARRs Are Not Necessary for the Upcoming Preliminary Injunction Hearing

Again, the Court need not decide whether disclosure of the ARRs could be required or should be required in the future in order to grant the relief requested. But in any event, the ARRs are not relevant to the case and, even if minimally relevant, are certainly not necessary for the upcoming preliminary injunction hearing.

Beginning with relevance, the content of specific ARRs is not even arguably relevant to six of Plaintiffs’ seven claims. Claims I-V are not asserted against the federal agency defendants and involve direct challenges to the Workforce Executive Order and Workforce Memorandum (as well as unspecified supposed alleged USDS directives). Plaintiffs insist that they “also challenge agencies’ actions to implement the reorganization.” Opposition at 6. But Claim VI is just derivative of Plaintiffs’ (incorrect) understanding of the Executive Order and Workforce Memorandum and does not depend upon any particular ARR’s contents—the entire basis of that claim is that the federal agency defendants acted unlawfully by following the Executive Order and Workforce Memorandum. *See* ECF No. 1 (Compl. ¶ 396).² Claim VII is the only claim that even conceivably

² In full, that paragraph states as follows: “None of the Federal Agency Defendants have the statutory authority to cede their decision-making authority with respect to the employees of that agency to the President, OMB, OPM, or DOGE. None of the Federal Agency Defendants have the statutory authority to implement the President’s unconstitutional direction to engage in large-scale RIFs, including with respect to functions, programs, or offices *that the President and those acting on his authority* have decided to cut; or to impose staffing cuts that take an agency, irrespective of duty or need, back to government-shutdown lapse levels. The Federal Agency Defendants have exceeded their authority by implementing the President’s unconstitutional plans.”

could be read as attacking the merits of particular ARRs independent of the Executive Order and Workforce Memorandum. And even that is a stretch. The claim includes a hodgepodge of allegations, but all of them appear to involve things Plaintiffs allege that the Executive Order and Workforce Memorandum *require* the agencies to do. *Id.* ¶ 403.³

But even assuming that Plaintiffs are correct that the ARRs satisfy Rule 26(b)(1)’s minimal relevance standard, that is not the relevant question. *See* Opposition at 4. Rather, the question is whether the ARRs are necessary for the upcoming *preliminary injunction hearing*—and indeed, so central to that hearing that the Government should be required to irreversibly produce assertedly privileged documents on an emergency timetable without an ordinary discovery motion or briefing, and without an orderly opportunity for the Government to seek appellate review. The answer to that question is plainly no.

To see why, one need only look at the Court’s TRO opinion. This Court concluded the following: at least some of all three groups of Plaintiffs have standing, TRO Opinion at 13-18, none of the Plaintiffs are required to channel their claims, *id.* at 18-25, the Workforce Executive Order is subject to review, *id.* at 30, the Workforce Memorandum is final agency action subject to review under the APA, *id.* at 35-36, the Workforce Executive Order and Workforce Memorandum are unlawful (among other things, that statutory authority for the Executive Order is “plainly lacking,” *id.* at 27, and that the Workforce Memorandum “is far outside the bounds of any authority that Congress vested in OPM or OMB,” *id.* at 34), Plaintiffs established irreparable harm, *id.* at 37-38, and the balance of interests favor injunctive relief, *id.* at 38-39. And the Court reached these conclusions after holding a live hearing, as well as reviewing voluminous briefing, thousands of pages of declarations, and amicus briefs on both sides. The Court was already able to resolve all of the legal questions necessary to decide a preliminary injunction motion. That is why the Government respectfully asked the Court to simply issue a preliminary injunction at the hearing if it was going to issue any preliminary relief at all.

³ Earlier today, Plaintiffs filed an amended Complaint. ECF No. 100. That Complaint also asserts seven claims and it does not appear that there is any meaningful change in those claims from the original Complaint.

1 The fact that the Court reserved decision on the merits of Plaintiffs’ arbitrary and capricious
 2 claims, *id.* at 37, does not change the basic point that disclosure of the ARRs is not necessary for
 3 the Court to decide whether to issue a preliminary injunction. For one, the Court itself held that it
 4 could issue a TRO against individual ARRs because they “flow from likely illegal directives.”
 5 *Id.* at 39. If the Court reaches the same conclusion, it is unclear how reviewing individual
 6 ARRs—no matter how well reasoned—could affect the preliminary injunction analysis. More
 7 fundamentally, the purpose of a preliminary injunction is to provide interim relief pending a full
 8 adjudication on the merits; the Court does not necessarily need to resolve Plaintiffs’ likelihood of
 9 success on all seven claims at the preliminary injunction stage, just as it did not do so at the TRO
 10 stage. And that certainly does not justify requiring the Government to make immediate disclosure
 11 of highly sensitive materials.

12 Finally, the foregoing considerations also easily dispose of Plaintiffs’ meritless claim that
 13 the Government’s privilege is overcome here. The ARRs are not “highly relevant,” Opposition
 14 at 12, and they are not relevant at all to the preliminary injunction proceedings. The Government
 15 is not “act[ing] in secret.” *Id.* The basis of this claim is that the Government has not disclosed
 16 ARRs, but again, that is because ARRs are not final actions. Nor do Plaintiffs need the pre-
 17 decisional and deliberative ARRs to learn what is going on at agencies that concern them—since
 18 as previously explained, agencies have disclosed final decisions.

19 **V. At a Minimum, the Court Should Restrict Disclosure of the ARRs to the**
 20 **Court and Plaintiffs’ Counsel**

21 Given the foregoing, there is no basis for ordering disclosure of the ARRs at all. But even
 22 if the Court were to conclude, for example, that the ARRs are necessary to the litigation of the
 23 preliminary injunction motion (which, respectfully, they are not), or that Plaintiffs had overcome
 24 the Government’s qualified privileges (which they have not), Plaintiffs provide no good reason
 25 that these highly sensitive deliberative materials need to be disseminated publicly. At the very
 26 least, any disclosure obligation should be restricted to only Plaintiffs’ counsel—especially given
 27 the fact that the ARRs contain “strategies for agency negotiations with unions.” Again, as
 28 explained in the Motion, even this intermediate step is wholly unwarranted, would not fully cure
 the problems with the Disclosure Order, and would not obviate the Government’s need to seek

1 immediate appellate relief and a stay of any such ruling. But it would ameliorate some of the most
 2 significant harms to the Government of having its deliberative work-product made public.

3 **VI. The Court Should Grant an Immediate Administrative Stay**

4 Finally, if the Court does order disclosure, it should grant a seven-day administrative stay
 5 of any disclosure order to allow for the Solicitor General to decide whether to seek emergency
 6 appellate relief (including a seven-day administrative stay of any order requiring disclosure under
 7 a protective order). Particularly since immediate disclosure of these documents is not even
 8 plausibly necessary to meet an ongoing emergency, the Court should give the Ninth Circuit and
 9 potentially the Supreme Court a reasonable opportunity to determine if this Court should have the
 10 final word on whether the ARRP's and other documents must be disclosed.

11 **CONCLUSION**

12 For the foregoing reasons, the Court should relieve Defendants of the obligation to produce
 13 the ARRP's and related material, and grant a seven-day administrative stay of any disclosure order.

14 Dated: May 14, 2025

Respectfully submitted,

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